

Subject: Mediation?

From: Ernie Nycz <ernie@nycz.com>

Date: Thu, 11 Nov 2010 15:34:37 -0800

To: "Massand, Neal" <NMassand@dykema.com>, "Colao, Brian" <BColao@dykema.com>

Sorry, your previous email to me did not address the mediation issue.

I do not want to get the issue wrong. Are you saying that you will not mediate before the deadline? If that is the case, I will put that in the certificate of conference.

I do not want to file a motion to compel, and then have you tomorrow tell me that you are willing to mediate by the deadline.

Please reply.

Ernie Nycz
Attorney for Larkspark
214 924 3912

Subject: Dates for Mediation

From: "Ernest P. Nycz" <ernie@nycz.com>

Date: Tue, 16 Nov 2010 11:32:27 -0600

To: "Colao, Brian" <BColao@dykema.com>, "Massand, Neal" <NMassand@dykema.com>

Brian,

Further to our call with the Court this morning, What dates work for you for mediation?

That was the first time that I heard that you wanted all of your clients at the mediation. You had not mentioned that to me before.

What if we did the mediation on the afternoon of Monday, December 29 when all your clients are here? Is there an issue with that date?

I believe I can still get depositions done Nov 29 and Nov 30, and fit in a mediation the afternoon of November 29.

Ernie Nycz
Attorney for Larkspark
972 377 8191

Subject: Mediation - Vocalspace v. Larkspark

From: "Ernest P. Nycz" <ernie@nycz.com>

Date: Mon, 03 Jan 2011 10:10:43 -0600

To: "Colao, Brian" <BColao@dykema.com>, "Massand, Neal" <NMassand@dykema.com>

Brian and Neal:

Per the Court's ruling on scheduling December 6, 2010

| | | |
|------------|--|---|
| 12/06/2010 | | Reset Scheduling Order Deadlines: Final Pretrial Conference set for 2/10/2011 09:00 AM in Ctrm A01 (Sherman - Annex) before Magistrate Judge Amos L. Mazzant. Discovery due by 1/7/2011. Jury Selection set for 2/10/2011 09:00 AM in Ctrm A01 (Sherman - Annex) before Magistrate Judge Amos L. Mazzant. Mediation Completion due by 1/14/2011. Proposed Pretrial Order due by 2/4/2011. (pad,) (Entered: 12/06/2010) |
|------------|--|---|

We are supposed to have mediation by January 14, 2010, less than two weeks away.

I do not want to delay mediation. Trial is coming up, and I need to focus on the trial.

If you are not going to agree to mediation, please let me know as soon as possible. I will file another motion to compel mediation by mid week if we cannot agree on mediation.

All Summary Judgments have been filed, as well as responses. Everyone should know what each others arguments are.

Please let me know who you would like to use for a mediator. I am going to make some calls today and will let you know who I will suggest.

I think that at first we can schedule a half day of mediation, and see where we go from there.

Ernie Nycz

Attorney for Larkspark

972 377 8191

Subject: Mediation Motion | Vocalspace

From: "Ernest P. Nycz" <ernie@nycz.com>

Date: Wed, 05 Jan 2011 11:03:55 -0600

To: "Colao, Brian" <BColao@dykema.com>, "Massand, Neal" <NMassand@dykema.com>

Brian,

Monday I sent an email requesting your position on mediation, on meeting the courts scheduling order to mediate prior to January 14, 2011.

I have not received a response.

I called Neal who told me to call you on this issue.

I just called and left you a voice mail.

I plan to file a motion to compel mediation early this afternoon. What do I put for the certificate of conference?

Ernie Nycz

Subject: Mediation for VocalSpace

From: "Ernest P. Nycz" <ernie@nycz.com>

Date: Wed, 05 Jan 2011 13:01:17 -0600

To: "Colao, Brian" <BColao@dykema.com>, "Massand, Neal" <NMassand@dykema.com>

Brian,

Here are a couple of mediators that I would suggest in the Vocalspace matter and the times they have available:

Judge Harlan Martin (Retired)

<http://www.jamsadr.com/professionals/xpqProfDet.aspx?xpST=ProfessionalDetail&professional=1052&ajax=no>

Cost for 1/2 day mediation will be \$ 1250 per party

Available: January 10 - 14 ; January 17 & January 18

Judge Glen Ashworth

<http://www.jamsadr.com/professionals/xpqProfDet.aspx?xpST=ProfessionalDetail&professional=986&ajax=no>

Cost for 1/2 day mediation will be \$ 1500 per party

Available: January 10, 11, 13, 14. January 25 - 28

Ross Stoddard (Irving)

1/2 day = Approx \$ 800 per party. This is for 4 hours, anything over that is extra.

January 7 (Morning). January 13 (Afternoon).

I have calls into Sid Stahl and one other mediator.

Our side is available all the above dates.

What dates are you available to do?

Please pick one of the dates, or let me know as soon a possible what dates you can do..

I know your previous apprehension against mediation, and I do not want this to drag on too long.

Ernie Nycz
972 377 8191

Subject: Re: 30b6 deposition of LarkSpark | Dates for Mediation? |

From: "Ernest P. Nycz" <ernie@nycz.com>

Date: Tue, 11 Jan 2011 08:58:08 -0600

To: "Cramer, William" <WCramer@dykema.com>

CC: "Colao, Brian" <BColao@dykema.com>, "Massand, Neal" <NMassand@dykema.com>, "Saifi, Mina" <MSaifi@dykema.com>

Bill:

I will check with my client this morning and get back to you.

Please know that any deposition of my client will take place at a neutral location in Collin or Grayson county.

After Brian's outburst towards my client at the last set of depositions we are not going to your office for his deposition. I will get you a location up here in Plano where you can depose Daniel Lorenzo.

Also, please confirm, the deposition will be limited to 3 hours and as you stated below, limited to the new claims added in the amended answer / counterclaim, i.e. the Defendants claims of copyright invalidity.

Lastly, given we are a little over one month from ADR deadline, can I get a list of dates when your side is available for mediation? The mediators I spoke with urged me to book ahead as they fill up, and we are only 4 weeks from the deadline to mediate.

Ernie Nycz

On 1/10/2011 4:13 PM, Cramer, William wrote:

Ernie,

Following up on last week's ruling by Judge Mazzant, we would like to schedule the 30b6 deposition of LarkSpark on the limited subject of the amended answer/counter-complaint. How does Monday or Tuesday of next week look (morning or afternoon -- your choice)? We'll shoot off a notice once we have a date back from you.

Regards,
Bill Cramer

William D. Cramer
Of Counsel

Subject: Mediation - Vocalspace Reply Needed

From: "Ernest P. Nycz" <ernie@nycz.com>

Date: Mon, 07 Feb 2011 17:31:37 -0600

To: "Cramer, William" <WCramer@dykema.com>, "Colao, Brian" <BColao@dykema.com>, "Massand, Neal" <NMassand@dykema.com>, "Saifi, Mina" <MSaifi@dykema.com>

Bill / Brian / Neal / Mina:

Sorry I had referenced the wrong order below.

Per the Court the deadline is now Feb 14, 2011 for mediation. See Order of January 7, 2011

DATE: 1/7/2011

MAGISTRATE JUDGE

COURT REPORTER: DIGITAL

Amos L. Mazzant

COURTROOM DEPUTY: Debbie McCord

| | |
|---|-------------------------------|
| VOCALSPACE, LLC VS LORENZO, ET AL | CAUSE NO: 4:09CV350 |
| ATTORNEY FOR PLAINTIFF | ATTORNEY FOR DEFENDANT |
| Brian Anthony Colao | Ernest Paul Nycz |
| | |

On this day, came the parties by their attorneys and the following proceedings were held in Sherman, TX:

| TIME: | MINUTES: | EMERGENCY MOTION TO CONTINUE TRIAL SETTING (dc#155) AND EMERGENCY MOTION FOR LEAVE TO FILE ADDITIONAL SUMMARY JUDGMENT PLEADINGS (dc#156) |
|---------|----------|--|
| 1:57 pm | | The Court called case, hearing held via telephone, digitally recorded. The Court heard from counsel. |
| 2:14 pm | | The Court will grant the Plaintiff's motions. |
| | | The case is now reset to Monday, March 21, 2011. |
| | | Deadline to file summary judgment: January 31, 2011. Response by February 7, 2011. Replies by February 11, 2011. If motion is filed before January 31, then normal response rules will apply. |
| | | Mediation deadline - February 14, 2011. |
| | | Code discovery issue discussed. If old code exists in its native format, arrangements can be made for defense to come look at it. Plaintiff and Defense counsel will further discuss the matter. |
| | | Court will issue a new scheduling order. |
| 2:41 pm | | Court in recess. |

Defendants are set for Feb 14, but we need to confirm very soon.

I have also checked and Judge Martin is also available Feb 14.

Please respond. I do not want to have to file another motion to compel mediation.

Ernie Nycz

Judge Harlan Martin (Retired)

<http://www.jamsadr.com/professionals/xpqProfDet.aspx?xpST=ProfessionalDetail&professional=1052&ajax=no>

Cost for 1/2 day mediation will be \$ 1250 per party

Available: February 14

----- Original Message -----

Subject:Mediation - Vocalspace Reply Needed

Date:Mon, 07 Feb 2011 14:40:12 -0600

From:Ernest P. Nycz <ernie@nycz.com>

To:Cramer, William <WCramer@dykema.com>, Colao, Brian <BColao@dykema.com>, Massand, Neal <NMassand@dykema.com>, Saifi, Mina <MSaifi@dykema.com>

Bill / Brian / Neal / Mina:

Per the Court's ruling on scheduling December 6, 2010

| | |
|------------|---|
| 12/06/2010 | Reset Scheduling Order Deadlines: Final Pretrial Conference set for 2/10/2011 09:00 AM in Ctrm A01 (Sherman - Annex) before Magistrate Judge Amos L. Mazzant. Discovery due by 1/7/2011. Jury Selection set for 2/10/2011 09:00 AM in Ctrm A01 (Sherman - Annex) before Magistrate Judge Amos L. Mazzant. Mediation Completion due by 1/14/2011. Proposed Pretrial Order due by 2/4/2011. (pad,) (Entered: 12/06/2010) |
|------------|---|

Here is a list of mediators. Please pick one.

Please confirm we are on for next week, Monday January 14?

If you want Ross Stoddard, then this friday Feb 11 work for you?

Ernie Nycz
972 377 8191

Judge Bill Brister

1/2 day = \$ 900 per side. + \$ 175 per party fee = \$ 1075 for 1/2 day

<http://www.jamsadr.com/professionals/xpqProfDet.aspx?xpST=ProfessionalDetail&professional=995&ajax=no>

Judge Brister is available Monday Feb 14.

Jerry Grissom

\$ 975 per party for 1/2 day.

<http://www.jamsadr.com/professionals/xpqProfDet.aspx?xpST=ProfessionalDetail&professional=1021&ajax=no>

Mr. Grissom is available Monday, Feb 14.

Ross Stoddard

\$ 800 per party per 1/2 day.

Bio attached.

Mr. Stoddard is available Feb 11 and Feb 17.

| | |
|-------------------------|---|
| Stoddard Bio.pdf | Content-Type: application/pdf Content-Encoding: base64 |
|-------------------------|---|

Subject: Re: Mediation - Vocalspace Reply Needed

From: "Ernest P. Nycz" <ernie@nycz.com>

Date: Tue, 08 Feb 2011 15:21:05 -0600

To: "Cramer, William" <WCramer@dykema.com>, "Colao, Brian" <BColao@dykema.com>, "Massand, Neal" <NMassand@dykema.com>, "Saifi, Mina" <MSaifi@dykema.com>

2nd day sending this email.

Some from Dykema please reply. Are you getting my emails?

Ernie Nycz

On 2/7/2011 5:31 PM, Ernest P. Nycz wrote:

Bill / Brian / Neal / Mina:

Sorry I had referenced the wrong order below.

Per the Court the deadline is now Feb 14, 2011 for mediation. See Order of January 7, 2011

Subject: Re: Mediation - Vocalspace Reply Needed
From: "Ernest P. Nycz" <ernie@nycz.com>
Date: Fri, 11 Feb 2011 14:32:15 -0600
To: "Colao, Brian" <BColao@dykema.com>, "Massand, Neal" <NMassand@dykema.com>

Brian:

I have been trying to several months to set up a mediation.

We could have mediated this week.

Are you available for mediation on February 21? We need to set a date.

Please respond today if possible.

Ernie Nycz
Attorney for LarkSpark

On 2/8/2011 3:50 PM, Colao, Brian wrote:

Ernie, can you please call me tomorrow, my trial which was set for this week has been moved to next week due to the snow and I need to discuss how we are going to schedule things in light of my new trial setting. thanks

From: Ernest P. Nycz [<mailto:ernie@nycz.com>]
Sent: Tuesday, February 08, 2011 3:21 PM
To: Cramer, William; Colao, Brian; Massand, Neal; Saifi, Mina
Subject: Re: Mediation - Vocalspace Reply Needed

2nd day sending this email.

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Ernie Nycz

On 2/7/2011 5:31 PM, Ernest P. Nycz wrote:

Bill / Brian / Neal / Mina:

Sorry I had referenced the wrong order below.

Per the Court the deadline is now Feb 14, 2011 for mediation. See Order of January 7, 2011

Subject: Re: Mediation - Vocalspace Reply Needed | Mediation Next Week
From: "Ernest P. Nycz" <ernie@nycz.com>
Date: Fri, 11 Feb 2011 14:43:42 -0600
To: "Colao, Brian" <BColao@dykema.com>, "Cramer, William" <WCramer@dykema.com>

Brian:

Is it possible to mediate next week ? Can Bill Cramer (your partner) fill in for you if you are in trial?

I have some plans for the week of February 22 and February 28, which will take me out of my office. I make these plans over a month ago after looking at the mediation schedule and the deadline of February 14.

I really feel that your side has been ignoring all requests for mediation. In these many months, you have not provided me a single date when you are able to attend mediation.

Please give me a set of dates when you are able to mediate. My suggestion, even if Bill Cramer just gets the process started with a 1/2 day mediation, if there is progress there may be another mediation session needed which you could attend.

Ernie Nycz
Attorney for LarkSpark
972 377 8191

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Sent: Tuesday, February 08, 2011 3:21 PM
To: Cramer, William; Colao, Brian; Massand, Neal; Saifi, Mina
Subject: Re: Mediation - Vocalspace Reply Needed

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